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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,005	04/06/2006	Warren Edward Roh	IDP-0401 US	7008

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LAW OFFICE OF DALE B. HALLING  
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COLORADO SPRINGS, CO 80910

EXAMINER
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HELVEY, PETER N.

ART UNIT	PAPER NUMBER
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4137

MAIL DATE	DELIVERY MODE
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06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,005	<b>Applicant(s)</b> ROH, WARREN EDWARD	
	<b>Examiner</b> PETER HELVEY	<b>Art Unit</b> 4137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/6/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-10 and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Lizzio* (U.S. Patent No. 6,257,434 B1)

Regarding claim 8, *Lizzio* discloses a universal carrying device (P), comprising a first substantially planar cover (1); a second substantially planar cover (2) having an opening (14); and a hinge (23) attaching the first substantially planar cover (Fig. 2) and the second substantially planar cover wherein the first substantially planar cover snap fits with the second substantially planar cover (col. 2, ll. 64-67).

Regarding claim 9, *Lizzio* further discloses the second cover having a hinge line (11).

Regarding claim 10, *Lizzio* further discloses the first cover having a lip (Fig. 2).

Regarding claim 13, *Lizzio* further discloses the first substantially planar cover having a flange (18) along a portion of the lip (Fig. 2).

Regarding claim 14, *Lizzio* further discloses the hinge being a living hinge (23; Fig. 7).

Regarding claim 15, *Lizzio* discloses a universal carrying device (P), comprising a first substantially planar cover (1) having a lip (21) along a portion of a periphery of the first substantially planar cover (Fig. 2); a second substantially planar (2) cover having an opening (14); and a living hinge (23) attaching the first substantially planar cover and the second substantially planar cover (Fig. 2).

Regarding claim 16, *Lizzio* further discloses a second living hinge (11) in the second substantially planar cover.

Regarding claim 17, *Lizzio* further discloses the first substantially planar cover snap fits into the second substantially planar cover (col. 2, ll. 64-67).

Regarding claim 18, *Lizzio* further discloses the first substantially planar cover having a printing surface. As a note, "printing surface" is interpreted as a surface capable of being printed on without it having been given any special definition. Any flat surface of either cover taught by *Lizzio* is capable of being printed on, thus meeting the scope of the claim.

Regarding claim 19, *Lizzio* further discloses the first substantially planar cover having a cut out (24).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Betras* (U.S. Patent No. 5,996,836), in view of *Magee* (U.S. Patent No. 6,394,329 B1).

Regarding claim 1, *Betras* discloses a carrying device (24), comprising: a first cover (34); a carrier (28) having an opening (36); and a hinge attaching the first cover to the first carrier (Fig. 3).

*Betras* does not specifically disclose the cover or carrier being rectangular in shape or the carrier having a hinge line.

However, *Magee* discloses an article carrier having cover (102) and carrier (122) portions both being generally rectangular in shape. *Magee* also discloses the carrier having a hinge line (Fig. 10; bend between 122 and 124).

It would have been an obvious matter of design choice to change the shape of the cover and carrier to rectangular instead of circular, since such a modification would have involved a mere change in the size or shape of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify *Betras*'s carrier element in view of *Magee* by adding a hinge line, in order to allow the carrier taught by *Betras* to carry the necked bottle taught by *Magee*.

Regarding claim 2, *Betras* discloses the hinge being a living hinge (Fig. 3).

Regarding claim 4, *Magee* discloses the hinge line extending across the opening. (Fig. 10)

Regarding claim 7, *Betras* discloses a lip (30) along a portion of the cover (Fig. 4)

5. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Betras* in view of *Magee* as applied to claim 1 above, and further in view of *McDonald* (U.S. Patent No. 5,609,277).

Regarding claim 3, *Betras* in view of *Magee* substantially discloses all the structural limitations of the claim as detailed above except does not expressly disclose a carrier adapter that engages the opening of the carrier.

However, *McDonald* teaches that providing a beverage container with a carrier adapter (38) that engages an opening in a carrier (40) is known in the art. To provide any beverage container with a specific shape and size adapter such that it can be retained in a carrier with a specific shape and size opening such as the carrier taught by *Magee* would have been obvious to one having ordinary skill in the art at the time of the invention.

Regarding claim 5, *Betras* in view of *Magee* discloses all the substantial structural limitations of the claim as detailed above except *Betras* does not teach the opening having a narrow and a fat end with the fat end near the hinge.

However, *Magee* teaches an opening (116) with a narrow end (112) and a wider end (114) with the wider end located nearer the hinge.

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At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify *Betras*'s carrier element in view of *Magee* by changing the opening shape, in order to allow the carrier taught by *Betras* to carry the necked bottle taught by *Magee*.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Betras* in view of *Magee* as applied to claim 1 above, and further in view of *Lizzio*.

Regarding claim 6, *Betras* in view of *Magee* substantially discloses all the structural limitations of the claim as detailed above except does not expressly disclose the carrier and cover snap fitting together.

However, *Lizzio* teaches a two part hinged article carrier wherein the cover and carrier portion snap fit together (col. 2, ll. 64-67).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the carrier device of *Betras* in view of *Magee* in further view of *Lizzio* by making the carrier and cover portions snap fit, in order to securely hold the article carrier device in the closed position.

7. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lizzio* as applied to claims 8 and 15 above, and further in view of *McDonald*.

Regarding claims 11 and 20, *Lizzio* substantially discloses all the structural limitations of the claim as detailed above except does not expressly disclose a carrier adapter that engages the opening of the carrier.

However, *McDonald* teaches that providing a beverage container with a carrier adapter (38) that engages an opening in a carrier (40) is known in the art.

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To provide any container with a specific shape and size adapter such that it can be retained in a carrier with a specific shape and size opening such as the carrier taught by *Magee* would have been obvious to one having ordinary skill in the art at the time of the invention.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Lizzio* as applied to claim 8 above, and further in view of *Magee*.

Regarding claim 8, *Lizzio* discloses all the substantial structural limitations of the claim as detailed above except *Lizzio* does not teach the openings having a narrow and a fat end with the fat end near the hinge.

However, *Magee* teaches an opening (116) with a narrow end (112) and a wider end (114) with the wider end located nearer the hinge.

It would have been obvious to one of ordinary skill in the art to replace the openings taught by *Lizzio* with openings shaped and oriented as taught by *Magee* achieve the predictable result of providing openings for venting the contents of the carrier.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571)272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./

Examiner, Art Unit 4137

June 3, 2009

/Gary Jackson/

Supervisory Patent Examiner

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